

HR/LR Policy and Procedure #1387

Employees with Multiple Appointments

Issued 10/01/2004
Revised N/A
Authority Enterprise Human Resources

OVERVIEW

Objective	To clarify calculation of overtime hours in situations where employees hold more than one appointment in the Executive Branch
Policy Statement	Overtime for employees with multiple appointments shall be calculated pursuant to the instructions in this policy
Scope	Applies to employee in the Executive Branch
Definitions	<p><u>Definitions</u></p> <p><u>Concurrent Appointment(s)</u> – Two or more periods of overlapping employment in the Executive Branch, whether those appointments are in the same agency or different agencies.</p> <p><u>Exempt</u> – Not subject to the overtime provisions of the FLSA.</p> <p><u>Existing Active Appointment</u> – The appointment with the earliest date of hire that is in active status.</p> <p><u>FLSA</u> – Fair Labor Standards Act, a federal law governing employee eligibility and calculation of hours worked and overtime pay standards (52 Stat. 1060, as amended; 29 U.S.C. 201-219).</p> <p><u>Multiple Appointments</u> – The situation that exists when an employee has two or more concurrent appointments.</p> <p><u>Non-Exempt</u> – Subject to the overtime provisions of the FLSA.</p> <p><u>Secondary Agency</u> – A state agency that appoints a person who already has an active appointment in the state’s SEMA4 system.</p> <p><u>“Regular Rate of Pay”</u> – The Department of Labor’s term for the weighted average hourly rate that an employee receives for a week’s worth of work. This rate can vary from week to week.</p>
Exclusions	Do not use the information in this communication for determining overtime under the collective bargaining agreements or plans. In addition, this policy applies to the employee’s combined hours in the Executive Branch. Hours worked in Judicial and Legislative Branch jobs are not combined.
Statutory References	N/A

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Sent by Deputy Commissioner Paul Larson:

Over the last several months, representatives from DOER and other state agencies have been meeting to discuss issues relating to state employees who have more than one state appointment in the executive branch. While there are no restrictions regarding the number of appointments a state employee may hold, we have identified some issues with regard to the calculation of overtime hours and when they do or do not apply.

Based on our review of the appropriate State and Federal regulations, DOER has determined that the combined hours of the multiple appointments shall be considered when determining whether or not an employee is entitled to overtime after they have completed forty (40) hours of work during their work week.

Attached is the following procedure which will apply to situations where your agency has identified an employee who is currently holding more than one appointment in the Executive Branch. It is important to note that this policy applies to the determination of overtime as it relates to the Fair Labor Standards Act (FLSA). Overtime under collective bargaining agreements and plans is calculated separately for each job, based only on the hours worked (as defined in the applicable agreement/plan) in that appointment. Do not use the information in this communication for determining overtime under the collective bargaining agreements or plans. In addition, this policy applies to the employee's combined hours in the Executive Branch. Hours worked in Judicial and Legislative Branch jobs are not combined.

The following information relates to the calculation of FLSA overtime in both the retroactive and prospective calculations. This multiple appointment policy is effective October 6, 2004. In addition, you need to review any multiple appointments that were in effect from October 9, 2002 through October 5, 2004. Calculate FLSA overtime in accord with this procedure and pay any overtime that may be due to employees.

Application of FLSA Overtime to Multiple Appointments

The purpose of this procedure is to assist and guide state agencies in determining if and when the hours of work in the combined appointments are to be calculated as overtime hours under the FLSA. This executive branch statewide procedure is to be followed whenever an employee has more than one active record in the SEMA4 system. This procedure applies solely for the purpose of determining whether or not, as a result of the multiple appointments, the combined hours of work are subject to the overtime provisions of the federal Fair Labor Standards Act (FLSA). Any questions regarding the interpretation of this procedure are to be directed to the DOER Compensation Division.

Responsibility

When the agency making a new appointment learns that the employee already has a SEMA4 record in active status, they must contact the agency or agencies where the employee is employed to determine FLSA implications. This includes reviewing situations where the other appointment is within the same agency or the same or different MnSCU college/university.

First, identify the work periods in which the employee actually worked more than 40 hours. Unless an employee has more than 40 hours of work, excluding paid time off, during a work period, no FLSA overtime is due. For any work week which exceeds 40 hours, calculate the regular rate of pay if at least one of the appointments has a higher pay rate than the other. The regular rate of pay is determined by adding the hourly rates for all of the multiple appointments and dividing by the total number of combined hours worked less any paid time off.

Second, determine if the employee earned any extra pay via any of the earnings codes listed on the attachment. If an employee worked more than 40 hours during a work period and earned extra pay for one of these reasons during the same work period, you will need to calculate regular rate of pay for that work week.

Finally, in addition to the extra pay listed in the event codes, any non-discretionary lump sum payments must

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be considered in the regular rate of pay calculation. Examples of lump sum payments are:

- hiring bonuses;
- honoraria;
- any other lump sum payment; required by contract or compensation plan; or
- any retroactive adjustments required by contract.

Lump sum payments that recognize compensation for activity beyond the work week is calculated by dividing the amount of the lump sum payment by 2088 hours which reflects an annual payment over all of the 52 work weeks. For example:

An employee who receives a lump sum payment of \$630.00 is divided by 2088 hours in the year which equals \$.30 per hour in addition to their regular hourly rate.

SEMA4 – The state's human resources and payroll system. Statewide Employee Management Application. The "4" in SEMA4 refers to Human Resources processing, Payroll processing, Benefits processing, and Reporting.

Use the Earn Code list to identify the extra pay to be included in the regular rate of pay. Add up extra pay received from all of these sources for the work period. Multiply that total by the number of overtime hours in the work week. See attached example for help with calculation of regular rate of pay.

Work Week – Seven consecutive calendar days, usually Wednesday through Tuesday. In very few cases, there are employees who qualify for work periods of other durations (health care, corrections, law enforcement, etc.).

Procedures

1. A state agency which, through the application and/or hiring process learns that the employee they are about to hire or have hired has another active appointment in SEMA4, is responsible for notifying the other responsible authority(ies) or work units that the agency has hired this individual. View Multiple Jobs page in SEMA4 to find out whether an employee has multiple employment records. http://www.sema4.state.mn.us/html/doc/eng/webhelp/HRPANEL/MULTIPLE_JOBS.htm
2. All state agencies are required to review the *Employees with Multiple Active Appointments* report on a regular basis to determine if any of their employees have been appointed to another position in the same agency or another state agency.
3. Determine which of the following procedures should be applied with respect to the FLSA exempt or non-exempt status of the multiple appointments.

A. All Exempt Appointments

In the event that all of the concurrent active appointments are determined to be exempt status appointments, the combined hours of work from the multiple appointments shall not be factored in reaching the FLSA overtime threshold for purposes of overtime in the work week. However, concurrent exempt appointments should be reviewed periodically to confirm that both the appointments continue to be exempt.

B. All Non-Exempt Appointments

In the event the appointments are non-exempt, the following procedures shall apply.

1. When all appointments are non-exempt, regardless of whether the appointments are within the same agency or between state agencies, all hours actually worked shall be combined in determining when the employee reaches the 40 hour work week threshold for purposes of overtime calculation.

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All hours worked over 40 hours in the work week shall be paid at the rate of time and one-half based on the "regular rate of pay".

It is the responsibility of the agencies involved in the multiple appointments to reach a mutual understanding of the starting and ending times of this employee's work week. **The FLSA work week for all of the employee's appointments must be the same.**

2. The agencies involved in the multiple appointments are responsible for determining how overtime costs are apportioned. Generally, it is our belief that the secondary agency will be responsible for overtime costs.
3. Certain collective bargaining agreements provide for the computation of paid time off (i.e., vacation, sick leave, compensatory time, paid holidays) toward the overtime threshold. However, this procedure applies solely to the application of the FLSA to overtime. If the employee earned overtime from the contractual requirement, that overtime can also be credited toward any FLSA overtime owed. A two-step process is required to ensure that an employee has been properly compensated. First, the agency must calculate overtime for each multiple appointment as specified in the collective bargaining agreement. Second, the agency must then calculate the FLSA overtime for each multiple appointment. If there is a difference in the amount between the calculations, the agency must take proper action to ensure that the employee is paid appropriately. (If the overtime earned under the collective bargaining agreement is earned at 1.5 times and is the same as the overtime earned under the FLSA requirement, no money is owed.)
4. Once the amount of overtime pay is determined, use earn code OTL.

C. Combination of Exempt and Non-Exempt Appointments

When the combination includes exempt and non-exempt appointments, it is the responsibility of the agencies involved to work collaboratively to determine whether or not the combined hours apply to the work week calculation for overtime.

The following factors apply in determining the work week threshold.

1. If a majority of the hours in the work week are exempt status hours, no FLSA overtime is required.
2. If a majority of the hours in the work week are non-exempt status hours, calculate overtime liability under FLSA. All hours worked will be calculated in the FLSA calculation.

Multiple Appointment Retroactive Pay Instructions

General Retroactive Pay Guidelines

Employees are eligible for retroactive pay if:

- at least one of their positions is in a non-exempt position,
- they have worked over 40 hours in the work week and,
- they have not been appropriately compensated as outlined in this procedure.

Agencies must work together to calculate retroactive pay and determine which agency will be charged for the retroactive pay. Generally, an agency who first hired the employee would not be liable for retroactive pay. The agency with the secondary appointment should be responsible for the retroactive pay.

An agency that has a set work schedule for an employee, who then deviates from that work schedule, causing the employee to be eligible for overtime, should be responsible for the overtime.

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Retroactive Pay Steps

1. Identify employees who currently hold multiple appointments. Employees may be identified by running the attached warehouse report *Employees with Multiple Active Appointments*.
2. Review each employee's list of multiple appointments. Employees with multiple appointments in which at least one of the appointments is non-exempt must be considered for retroactive pay. If all of the employee's multiple appointments are exempt, disregard them. These employees' are not eligible for retroactive pay.
3. Determine the length of the employee's multiple appointment situation, and the agency(ies) in which the employee works(ed).
4. If you have an employee who has a teaching position at MnSCU, you will have to contact MnSCU to discuss pay calculations. To determine whom to call, access the contact list within SEMA4. Contacts can be accessed through several different paths; your security clearance determines which path or paths you can access. Following are the different paths that are available:

Compensate Employees > Maintain Payroll Data > Use

Administer Workforce > Administer Workforce > Use

Compensate Employees > Administer Base Benefits > Use

There are three options for contacts: Business Unit, Department & Employee. We recommend you select the Employee option. Complete the "Emplld" search field (you can also select the name field, however, you need to be careful to select the correct employee from the results as you may have results for other employees with similar names) and click on the "Search" button.

5. If needed, contact the employee to determine the number of hours worked each day. A sample document is enclosed as a guide.
6. Determine the Regular Rate of Pay. Use the enclosed earn code list to identify the extra pay to be included in the regular rate of pay.
7. Calculate the retroactive pay using the enclosed Jane Doe sample worksheet as a guide.
8. Use the earnings code FLS to pay the retroactive pay.

Hours Worked by Jane Doe

Employee Name: Jane Doe

Agency Class Title		Week 1					Week 2										
		W	Th	F	Sat	Sun	M	T	W	Th	F	Sat	Sun	M	T		
Pine TC Worker	General Maintenance	8	8	8			8	8			8	8			8	8	8
Pine TC Interpreter	Sign Language						3	3			3	3	3				

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Employee works as Interpreter during academic year and GMW (evenings, Mon. through Fri.) in the summer. College needs her as Interpreter 3 hours a day for one calendar week for registration period. In addition, her GMW schedule is changed w/o 14 days notice in second week by moving her Friday evening hours to Sunday evening.

Determine regular rate of pay as follows:

$$\frac{\{\text{Hours worked in the existing active appointment} \times \text{hourly rate}\} + \{\text{Hours worked in the subsequent appointment(s)} \times \text{hourly rate}\} + \{\text{Earned extra pay}\}}{\text{Total number of combined hours worked}}$$

Calculation of Overtime Compensation Due Per Federal & State Regulations

Employee Name: Jane Doe Pay Period Ending 8/10/04
Employee Identification Number: 00123456

Agency	Class Title	Starting Ending			Starting Ending		
		Hourly Rate	Hours Worked	Wages for the Week	Hourly Rate	Hours Worked	Wages for the Week
	Base Earning From Hourly Appointments		Week 1 7/28/04	8/03/04	Week 2 8/04/04	8/10/04	
Pine TC	General Maintenance Worker	\$10.99	40	\$439.60	\$10.99	40	\$439.60
Pine TC	Sign Language Interpreter	\$23.00	6	\$138.00	\$23.00	9	\$207.00

Adjustments to Hourly Base Earning

Shift Differential	\$0.60	40	\$24.00	\$0.60	40	\$24.00
Other Hourly Adjustments	\$0.00	0	\$0.00	\$0.00	0	\$0.00
Subtotals for Hourly Work			\$601.60			\$670.60

<u>Regular Rate Computation</u>	Total Pay For Week	Total Hours	Regular Rate of Pay	Total Pay For Week	Total Hours	Regular Rate of Pay
	\$601.60	46	\$13.08	\$670.60	49	\$13.69

	1/2 of Reg Rate	Federal OT Hours	Federal OT Amount	1/2 of Reg Rate	Federal OT Hours	Federal OT Amount
FLSA OT Owed Each Week	\$6.54	6	\$39.24	\$6.85	9	\$61.65
Contract OT Premium Paid ** =						\$44.00
Federal OT amount each week =			\$39.24			\$17.65
Federal OT amount as FLS for Pay Period =			\$56.89			

**This is the 1/2 time portion only, the straight time portion is accounted for in the calculation.

State of Minnesota History of Hours Worked

Employee Name: _____

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Indicate the agency and job class to which this History of Hours Worked form applied (i.e., the agency and class in which the overtime work occurred):

Agency: _____ Job Class: _____

Current Agency (if different): _____

Note: Your work week is the 7 calendar days ending at _____ on _____
(time) (day of week)

	Work week Ending Date	Hours Worked Over 40	Supervisor's Name	Description of Work Performed or Other Compensable Activity
1				
2				
3				
4				
5				
6				
7				
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Page _____ of _____ Employee Signature: _____

SEMA4 Earn Codes to be Used in Regular Rate of Pay Calculations

Earn Code	Description
CB1	Call Back @ 1.0
D99	Pay in Lieu of Df Cp/TSA Match
ECA	Extracurricular Activity
HDF	Holiday Differential Lump Sum
HL3	Holiday OT @ 1.0
HL5	Holiday OT @ 1.0 for Part-Time
HON	Honoraria
ICS	Intensive Com Supv Agents
ICV	ITS Initial Appt Incentive
OC1	On Call @ 16.7%
OC2	On Call @ 25%
OC3	On-Call @ 1.0

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OCD	On-Call @ \$45/Day
OCL	On-Call @ \$50/Day
OCS	On-Call Supervisor
OD1	Officer of the Day
OT1	Overtime @ 1.0
SAL	Sales Incentive
SIN	Sick Leave Use Incentive Pay
SPL	PCA Major Spill Differential
SPT	Shift Differential 5%-St. Paul TC
STB	Smoke Chaser-Stand By Pay
S40	Shift Differential .40
S50	Shift Differential .50
S55	Shift Differential .55
S70	Shift Differential at .70
TIP	Itasca St Park Tip
TPA	Itasca St Park Tip Allocated

RESPONSIBILITIES

Agencies are responsible for:	Application of this policy and procedure for employees with multiple appointments
MMB is responsible for:	Ensuring that agencies follow applicable state and federal regulations for payment of hours worked by employees with multiple appointments

FORMS AND INSTRUCTIONS

Contacts	Enterprise Human Resources Compensation Director
References	N/A